

REMARKS

Claim Rejections under 35 U.S.C. 101

Claims 1 - 19 stand rejected under 35 U.S.C. 101 for claiming nonstatutory subject matter. Claim 2 has been canceled. Independent claim 1 has been amended for the sake of clarity and now reads, in relevant part:

“A computer-implemented method of determining, through the use of a processor, the performance of an advertisement, the method comprising...”

The amendment to claim 1 contains no new matter and is supported by the specification. (See, e.g., Applicants' Specification at 0087, 0120).

Dependent claims 3 – 19 each add features to independent claim 1, but do not alter the statutory class of the subject matter claimed in amended claim 1. Therefore, Applicants respectfully request that the 35 U.S.C. 101 rejections to claims 1 and 3 – 19 be withdrawn.

Claims 20 – 36 stand rejected under 35 U.S.C. 101 for claiming nonstatutory functional descriptive material. Independent claim 20 has been amended for the sake of clarity and now reads, in relevant part:

“A computer application stored on a computer-readable medium and executed by a processor, the computer application capable of...”

The amendment to claim 20 contains no new matter and is supported by the specification. (See, e.g., Applicants' Specification at 0016, 0120).

Dependent claims 21 – 36 each add features to independent claim 20, but do not alter the statutory class of the subject matter claimed in amended claim 20. Therefore, Applicants respectfully request that the 35 U.S.C. 101 rejections to claims 20 – 36 be withdrawn.

Claims 2, 5 – 8, 15 and 17 – 36 stand rejected under 35 U.S.C. 101 for claiming an invention that cannot produce a concrete result.

Independent claim 1 has been amended to now recite, in relevant part:

“...wherein the input data points include one or more of data points about an advertisement description, data points about a creative description, and data points about a user description, and wherein the outcome data points include one or more of data points about user opinions and data points about user experience.”

Dependent claims 5 – 8, 15, and 17 – 19 have been amended where necessary to conform with the claim language of independent claim 1.

Independent claim 20 has been amended to now recite, in relevant part:

*“A computer application ... comprising:
... data collecting means for collecting a plurality of data points about user opinions regarding the advertisement;
data collecting means for collecting a plurality of data points about user experience regarding the experience of one or more users that have viewed the advertisement ...”*

Dependent claims 21 – 36 have been amended where necessary to conform with the claim language of independent claim 20. The above-described amendments contain no new matter and are supported by the specification. (See Applicants' Specification at 0045 - 0049).

The above-described amendments are intended to clarify the subject matter of the claims. Applicants are not claiming any subject matter which would be subjectively created, subjectively affected, or subjectively manipulated by the patent owner. Subjectivity exists, if at all, in the user, whose input or opinion in turn results in a concrete piece of information (for example, a data point). This subjectivity is not recited in any of the claims involved in this application. Therefore, Applicants respectfully request that the 35 U.S.C. 101 rejections to claims 5 – 8, 15 and 17 – 36 be withdrawn.

Claims 3, 4, 13, 16, 21, 22, and 32 stand rejected under 35 U.S.C. 101 for claiming an invention encompassing a human being. The cited claims do not claim a human being. The claims merely state that certain items are “are

accessible to an Evaluator” (claims 3 and 4) or “are viewable by an Evaluator” (claims 13, 16, and 32), or alternatively recite “a means to present [scores or data points] to an Evaluator” (claims 21 and 22). The claims as written clearly do not attempt to claim an Evaluator. As such, the claims above are allowable and Applicants respectfully request that the 35 U.S.C. 101 rejections be withdrawn.

Claim Rejections under 35 U.S.C. 112, second paragraph

Claim 15 stands rejected under 35 U.S.C. 112, second paragraph, as being indefinite, in that “the text comments” in claim 15 lack antecedent basis. Claim 15 has been amended to provide proper antecedent basis. Because claim 15 is now allowable, Applicants respectfully request that the 35 U.S.C. 112, second paragraph rejections be withdrawn.

Applicability of 35 U.S.C. 112, sixth paragraph

The Office Action states that Applicants attempt to invoke 35 U.S.C. 112, sixth paragraph, in claims 20 – 36 by using “means-plus-function” language. However, the Office Action appears to attempt to limit or restrict the interpretation of these claims to the means disclosed “specifically in para. [0096] *et seq.* of the published application (US 20040204983A1).” (Office Action dated June 27, 2008, p. 3). Applicants respectfully oppose any such attempted limitation or restriction. To the extent that any claims invoke 35 U.S.C. 112, sixth paragraph, Applicants insist that the entire specification and equivalents be considered when interpreting their means. (See 35 U.S.C. 112, sixth paragraph: “...such [means or step plus function] claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.” (emphasis added)).

Claim Rejections under 35 U.S.C. 102(e)

Claims 1 – 9, 11, 14, 16 – 28, 30 and 34 – 36 stand rejected under 35 U.S.C. 102(e) as being anticipated by Srinivasan et al., US 20020042738A1

(hereinafter “Srinivasan”). Applicants respectfully traverse the rejections of claims 1, 3 – 9, 11, 14, 16 – 28, 30, and 34 – 36.

Independent claim 1 recites, in part:

*“A computer-implemented method ... comprising:
... collecting a plurality of outcome data points;
... wherein the outcome data points include one or
more of data points about user opinions and data points
about user experience.”*

Independent claim 20 recites, in part:

*“A computer application ... comprising:
... data collecting means for collecting a plurality of
data points about user opinions regarding the advertisement;
data collecting means for collecting a plurality of data
points about user experience regarding the experience of
one or more users that have viewed the advertisement.”*

Srinivasan does not teach the features presented in independent claims 1 and 20. Srinivasan does not teach a computer-implemented method of collecting data points about user opinions or user experience, nor does it teach a computer application comprising data collecting means for collecting said data points. Rather, Srinivasan discusses a method for evaluating advertisements incorporating purely objective data, such as click-through rates.

Srinivasan teaches a method where “the inventive system uses one or more objective functions for determining advertising effectiveness.” (See Srinivasan at 0085 et seq.).

“Data is accumulated for each advertisement. This data typically include the fraction of visitors who click-through a particular ad, for example. Other data may include whether or not the customer purchased a particular product or a minimum ‘basket’ of products.” (See Srinivasan at 0104).

“The ad with the highest click-rate, or other measurement of the objective function, is then used as the default advertisement.” (See Srinivasan at 0106; see also Srinivasan example at 0114-0119).

Since both independent claim 1 and independent claim 20 include features not taught by Srinivasan, these claims are allowable. Therefore, Applicants respectfully request that the 102(e) rejections to these claims be withdrawn.

Dependent claims 3 – 9, 11, 14, and 16 - 19 contain all of the features of independent claim 1, and consequently are also allowable for at least the reasons previously discussed. Dependent claims 21 – 28, 30, and 34 – 36 contain all of the features of independent claim 20, and are also allowable for at least the reasons previously discussed. Therefore, Applicants respectfully request that the 102(e) rejections to these claims be withdrawn.

In addition to the reasons previously presented, dependent claims 6, 7, 24 and 25 recite further features not taught by Srinivasan. Claims 6 and 24 include a “performance score calculated using the data points about user experience.” Claims 7 and 25 include a “performance score calculated using the data points about user opinions.”

Srinivasan does not teach performance scores calculated using data points about user experience or user opinions. Srinivasan teaches a method of judging the performance of an advertisement through the use of objective functions such as click-through-rates, as illustrated previously. (See, e.g., Srinivasan 0086 et seq., 0104, 0106).

Therefore, for the additional reasons illustrated, claims 6, 7, 24 and 25 are allowable, and Applicants respectfully request that the 102(e) rejections to these claims be withdrawn.

Also, in addition to the reasons previously presented, dependent claims 5 and 23 recite further features not taught by Srinivasan. Claims 5 and 23 include:

“...a composite performance score which is calculated using one or more of:

a performance score calculated using data points about user experience;
a performance score calculated using data points about user opinions;
a performance score calculated using data points about advertisement relevance;
a performance score calculated using data points about an advertiser brand;
a performance score calculated using data points about a web-site brand; and
a performance score calculated using data points about user interest.”

Srinivasan does not teach any of the listed performance scores individually. As previously illustrated, Srinivasan teaches a method of judging the performance of an advertisement through the use of objective functions. (See, e.g., Srinivasan 0086 et seq., 0104, 0106). Logically, Srinivasan does not teach a composite performance score calculated using one or more of the performance scores listed above, as required in claims 5 and 23.

Therefore, for these additional reasons, claims 5 and 23 are allowable, and Applicants respectfully request that the 102(e) rejections to these claims be withdrawn.

Claim Rejections under 35 U.S.C. 103(a)

Claims 10, 12, 13, 15, 29 and 31 – 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan. In making the 103(a) rejections, the Examiner takes official notice that pop-up windows were a common means of presenting surveys at the time of the instant invention, asking for comments in the surveys was also common, and key-word analysis would have been an obvious mechanical efficiency in analyzing these comments.

Applicants state that they are unaware that pop-up windows were a common means of presenting surveys at the time of the instant application.

Applicants add that they are unaware that asking for comments in the surveys was also common at the time of the instant application. Applicants further state that they are also unaware that key-word analysis would have been an obvious mechanical efficiency in analyzing these comments at the time of the instant application.

If the Examiner's official notice is based on personal knowledge, Applicants respectfully request that the Examiner provide an affidavit or declaration setting forth specific factual statements and an explanation to support the findings. If the Examiner's official notice is not based on personal knowledge, Applicants respectfully request that the Examiner provide Applicants with one or more references or other documentary evidence to support the findings.

However, even if the facts officially noticed are proven true, which Applicants are not presently admitting or conceding, claims 10, 12, 13, 15, 29 and 31 – 33 are allowable.

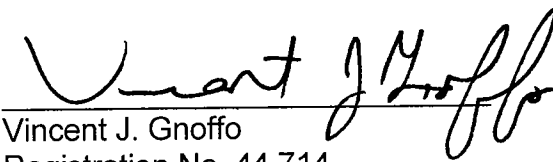
Claims 10, 12, 13, and 15 include all of the features of amended claim 1. As indicated previously, Srinivasan does not teach all of the features of claim 1. In addition, none of the facts officially noticed teach those features not taught by Srinivasan. In particular, "outcome data points includ[ing] one or more of data points about user opinions and data points about user experience" are neither taught by Srinivasan nor the facts officially noticed. Because these features are not taught, irrespective of the consideration of facts officially noticed, claims 10, 12, 13 and 15 are allowable. Therefore, Applicants respectfully request that the rejections to these claims be withdrawn.

Claims 29 and 31 – 33 include all of the features of amended claim 20. Srinivasan does not teach all of the features of claim 20. In addition, none of the facts officially noticed teach those features not taught by Srinivasan, particularly "data collecting means for collecting a plurality of data points about user opinions regarding the advertisement" and "data collecting means for collecting a plurality of data points about user experience regarding the experience of one or more users that have viewed the advertisement." For the reasons elaborated on

above, claims 29 and 31 – 33 are allowable. Therefore, Applicants respectfully request that the rejections to these claims be withdrawn.

Applicants respectfully request entry of this Amendment and allowance of this application. The Examiner is invited to contact the undersigned attorney for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Vincent J. Gnoffo", written over a horizontal line.

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